SOME OBSERVATIONS ON THE PSYCHOLOGY OF JURORS AND JURIES.

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Interpretation is the crux of science and the chief point of failure in scientific men. When concerned with human behavior it reaches the most subtle nicety—a kind of nicety, indeed, which projects far beyond the helping hand of instruments of precision or mathematical formulæ. Human interpretation is the pivot of human intercourse.

Under the prescriptions of our common jurisprudence the verdict of a court jury is mainly a resultant of many subconscious forces and unseen influences. Standing obviously to reason, this needs no demonstration. Comparatively little of "the evidence" admitted by the court during the trial and little of the pleading operates directly upon the mind of the jury—even though, paradoxically, without these there could be no trial.

It is no part of this paper to attempt the impossible task of unravelling the real or probable complex of past experiences, prejudices, emotions, misunderstandings or logical balances of judgment affecting the minds of the jurors.

Chiefly, it is limited to the proposition that, so far as the juror is concerned, court discipline tends to diminish rather than to increase, and to hamper rather than to facilitate his efficiency as an agency of justice. In other words, the conscientious juryman of good average equipment goes handicapped to his task largely because he is in subjection to an iron rule which takes no note of his individuality of fitness or unfitness, distress or ease, or of other personal and court conditions which themselves condition his judiciality. The problem is largely one of attitudes—a comparatively neglected field in pure or applied psychology.

The court takes cognizance of certain classes of influences likely

to affect the jury mind, giving way to some and aiming to suppress others that tend to prejudice and disturb the equanimity which makes for justice. But the main thesis here is that there are other and subtler influences which are often a still greater menace to justice and that there is little thought of reducing them to a minimum.

Manifestly, this should be the first consideration—just as the reduction of friction and of waste effort are of prime importance to the mechanist. Similarly, a business requiring so much personal sacrifice, such delicate mental balance coupled with resolute and courageous control, such openness to conviction without the weakness of hasty consent,—such a business should be carried on under the most favorable conditions instead of under conditions tending to defeat the desired ends.

In his delicate and often vital responsibilities everything should, as far as possible, conspire toward the best use of the juror's morally controlled intellectual judgment, whereas this judgment is subjected to an automatic conspiracy of obstacles, infirmities, and irritants. He is expected to be, and, in my experience, generally wants to be, free of all forms of bias for which the challenging attorneys take little thought. The juror, indeed, is in no small degree a marionette of which his subconscious self holds the controlling wires while the whole inherited system of trial by so-called peers is the grinning instigator. And the marionette is seldom wholly self-respecting.

All the way down from the earliest English times when witnesses were jurors and jurors were witnesses, gathering their own testimony and acting on their own knowledge, there have been many modifications of the jury system and diverse views as to its value.

The juror's office is, in some respects, the most ironical and paradoxical in the whole range of human service. Its requirements are those of a learned profession with demands of extraordinary versatility. The profession is to be followed by the individual for a very brief period with uncompensating "compensation" (often at an actual loss to the juror.) Yet the juror is so hedged about, officially suppressed and oppressed that the opportunity for initiative, the value of his knowledge, and the freedom of his judgment are reduced to the minimum instead of being employed at their maximum. He is, in effect, both puppet and prisoner.

I am especially considering the juror of the more intelligent and selected class. As a rule, he admits that jury service, in spite of its drawbacks, is educationally profitable and often interesting. He means that his duty shall be conscientiously performed. He is sensitive about sitting in judgment upon his fellows—for he knows his own liability to appear at any time as plaintiff or as defendant.

Yet withal, he is asked to swim with a stone on his neck, to be agile in a straight-jacket, to be patiently complaisant in duress—a mental Blondin in hobbles.

His bristles begin to rise, when, in his own home, the summons is served with a threat. The "law" first greets him with flashing eye and teeth uncovered. The more conscientious and honorable the man the more offensive appears the attitude of his legalized captor.

In the United States courts this summons may compel the victim to attend court fifty or a hundred miles away. He may live on a branch road where train service is such that he could not go and come every day. Even if he could, he would be out of pocket since the fee is insufficient to pay the passage. This condition may require the juror to be absent for a week at a time from his business, or from a sick wife, virtually without compensation and really without assurance of release in emergency. How can a man's judgment be at its best under such circumstances?

In any case, whether he lives far or near, the average man on receiving notification that he is wanted is, for the moment at least, disconcerted or timorous. Before him rises the giant of business demands, home dependents, personal physical disabilities or pathological possibilties, a sense of being penalized, of loss of freedom without cause, a danger of "contempt" through sheer ignorance and inexperience, a vision of all-night incarceration with uncongenial strangers, perhaps sickness in his family unwaited upon and beyond communication with him. I doubt whether any jury panel is ever drawn entirely free from some or all of these mental perturbations in some or all of the individuals. They are, however, especially true of the first-time juror. To add to his discomfiture his neighbors either pity his plight or make a jest of it or advise his making an effort to get excused. I have talked with two classes of drawn

men. One never expects to serve if release is possible, another chafes under his weary durance yet says that he ought and means to serve if possible.

Once in the traces and more or less accustomed to the routine the first pressure of the screws is less felt. But, none the less, the juror has a mind and a body. He does not forget that he was born a freeman nor that he is absent from farm or store or office. The delays, the wearisome reiterations and professional fencing, the interruptions and general unbusinesslike pace of procedure are at his cost. They irritate and disgust.

When the juror is drawn from the "panel" to serve on a particular case he is ordered into his seat with pretty much the same show of authority and sense of subjection as he sees when the accused defendant is policed into his presence. In an interesting reminiscence of long and varied jury experience published in a magazine article some years ago Mr. Joseph Hornor Coates speaks deprecatingly of these indignities:

> "The juryman from his first entrance in response to the court's peremptory summons finds little in his treatment to impress him with an idea of special dignity in his position, even if he has no overt cause of compliant. He is herded with his fellows, ordered about by the tipstaves or bailiffs of court, addressed in peremptory tones . . . . He sits in the court room with an ever-present sense if he be sensitive, that he must be careful not to get into trouble; the feeling of liberty is gone, he is enveloped in an atmosphere of restraint. Really, he is placed more on an equality with the prisoner at the bar than with the judge on the bench, yet he is as essentially a part of the court as that august potentate and may have at any time a greater responsibility imposed upon him. In some court rooms when disengaged from the actual trial of any case and awaiting summons to the jury-box, the juror is often forced to sit among criminals, witnesses, loafers and ill-smelling persons attracted to the court by business or curiosity."

While the average juror resents these low estimates of his office he does not, perhaps, fully realize how his own judicial faculty is lowered by his lowered estimate of the court as an institution. He becomes critical and dislikes being party to the system.

The juror's disposition to criticize the system (rather than court officers themselves, for the officers naturally fall into the formal bondage of a system) increases through the meanderings of the trial, —the surplussage, the objecting attorney, the lust for filing ex-

ceptions, the hectoring and heckling of witnesses, the muteness of the jury itself, and finally the mistrust of its honor in locking it up to reach an agreement—not always real but formal—all these incite the sensitive and the honorable mind especially to secret rebellion against the system. This state of mind cannot but endanger verdicts.

There are other influences of entirely conscious and purposive kind which affect verdicts too. Thus, in the jury's deliberations under lock and key a juryman will openly confess that he will not vote to acquit a negro prisoner because he *is* a negro; or he will stand by a chauffer in a suit for damages because he himself drives an automobile; or he is moved by fear of the judge to decide against what he has ordered or what he believes to be the judge's opinion; or he is politically afraid; or he dislikes to be the target of ten or eleven others; or he wants to go home, to take the next and last train, perhaps, to avoid another night at a hotel; or he cannot understand the case—its technical terms, its arithmetic, its alternatives, its fine-spun distinctions, some of which are purely technical and have no direct bearing on justice.

But while some of these influences arise directly out of the system and are corrigible they are mostly more obvious and overt than the subconscious causes of mental sway, arising immediately out of juridical prescription and attitude. Some of these have already been noted. Timidity, restraint, sense of personal loss, personal discomfort, offensive environment and treatment, worry over private troubles caused in part by absence from home or business —all of these affect the balances of a sensitive mind and are in a large measure corrigible. The implication that as a juror one cannot be trusted to come and go while the judge and the witnesses and attorneys are free hurts a sensitive mind and excites a rebellious spirit.

In fact, the wearisome reiterations in the examination and cross-examination of witnesses, the time consumed in legal fencing, the objecting and excepting, sometimes give the juror a sense of being unfairly exploited for the gain of attorneys rather than for the settlement of real difficulties. Juries are jealous of their time and personal freedom; so surplus verbiage and legal loquacity irritate to

the extent of damaging a cause—for it is a fact that a verdict or a disagreement is not seldom a slap at a lawyer's course. Many a case is undone by overdoing. This is a hard lesson for lawyers to learn. In his reminiscences of a long life at the bar Theron G. Strong (*The Outlook*) notes this danger of time-wasting excess and overdoing. He says:

"The man who can say the most good sense and sound law in the shortest time has a decided advantage. Juries are not much influenced by outbursts of eloquence, and appellate tribunals will not tolerate them. A tired and yawning jury will not be likely to take the most favorable view of an advocate's case, and when the attention of an appellate tribunal is lost and the judges begin to converse in whispers or bury themselves in the record, the oral argument is little more than a waste of time. When you have lost attention, you have probably lost your case. Juries and judges have become so accustomed to business-like methods that they appreciate a simple and clear presentation of the essential facts, each argument in its support clearly stated in a few well-conceived sentences, with no haltings and no revertings to things inadvertently omitted, no fumbling of documents, and no reading from authorities . . . .

"One of the most important arts of the court lawyer is to know when to keep still, and be able to exercise the self-command to do so. Many a case has been won by paying due regard to the attitude of the judge when he essays to combat the views of opposing counsel. The lawyer is indeed wanting in tact and discretion who then assumes any other rôle than that of a spectator of the proceedings. By all means let the judge do your arguing for you if he is so inclined, and if in this way he indicates that he is favorably disposed it is folly to attempt to reinforce his views; even though they could probably be reinforced to advantage, they do not need reinforcement so long as he adheres to them. The moment the court appears favorably inclined to your side of the case is the time to preserve discreet silence. This is equally true with juries, and if in the course of the trial there is the slightest leaning in your favor, then is the time to do as little as possible by objections or long cross-examinations, which can only have a tendency to lead the court and jury to think that you consider it necessary to strengthen your case when it needs no strengthening, the only effect being to counteract the favorable impression that has been made. Many a case has been spoiled by an inability to recognize the appropriate time to say nothing."

I quote this at some length because few lawyers are so discerning of the juror's point of view. I confess to the feeling of an oncoming bias against the lawyer who is working too hard. Too much repetition of evidence, too many witnesses, too great detail in the pleading, too much swelling molehills to mountains, too noisy oratory—all these excesses tell on the juror's temper. He does not

care to be treated as though he had not the brains to see the bearings of the testimony as it came from the mouths of the witnesses.

The court is quite right in sustaining objections to much extraneous matter that clogs the proceedings and overloads the jurors. But it is questionable whether the loss of time by a large majority of these objections does not tend to irritate jurors who are rightly jealous of their time and critical of a system which compels its loss without corresponding gain to them. Much of the matter ruled out or admitted after a battle between attorneys goes for what it is worth to the jury and not a little of it is without effect on the juror's mind either way, except as a general irritant. Whatever is evidence to his mind *is* evidence and willy-nilly his mind is affected by it. To a juror with imagination and the gift of interpretation evidence is often felt as atmosphere and is much more than the dry bones of admitted testimony.

For instance, in a trial in which the verdict turned chiefly on the motive or purpose of a paper engaging to purchase and pay for a large block of stock on a certain date, the lack of frankness and the constant evasiveness in one of the witnesses so strongly discredited him in the minds of at least half the jury that they virtually agreed that they would not employ such a man in their own businesses. Indeed the other half of the jury did not defend him. As this witness substantially agreed with and was on terms of more or less intimacy with the four others who told the same story the whole five were greatly weakened as witnesses. This was evidence unavoidable in coloring the minds of jurors, although not "evidence" on the record.

Again, in the case of a woman suing for damages as the alleged result of a fall by a defective brick pavement, more than one juror believed that the defense lost an opportunity in not bringing out in cross-examination the height and slope of the heels of her shoes—as these might have been more responsible for her tumble than the pavement itself. But as these jurors did not know anything about it—nothing having been said in court about it—they of course did not openly consider it. But the point is, that even such a case no one knows how far such a passing thought gives cast to the mind

consciously balancing itself to a nicety of honesty and absolute justice. It becomes evidence.

It is questionable whether the cause of justice would not be better served by a much more liberal attitude toward the admission of evidence than our jurisprudence usually allows.

This particular case is also a good illustration of jury-irritation through excess of detail and repetition. Large photographs were displayed and re-displayed and pencil-marked and passed and re-passed among the jury to show the pavement and the curbstone. All witnesses but one corroborated what the photographs were supposed to picture and no juror or any one else probably had any doubt about the pavement or about the slipping of the woman's foot. But it would have been just as effective to show the photographs once and for all, and obtain a simple statement of fewer witnesses without such over-elaboration.

There was a juror, for instance, who was suffering from a racking cough, who lived on a small branch railroad at perhaps fifty miles distance. He had left many business interests. It was now the last day of the term—Saturday. If he lost a certain afternoon train he would lose a whole day in getting home. He knew that a team had been sent for him a dozen miles or so through a snow-drifted country and if he could not catch that train his non-arrival would not be understood. Naturally he looked repeatedly at his watch when every senseless repetition delayed the trial. The judge did his part to push the trial through but there is a limit to the judge's action at least as a matter of expediency. The juror with dismay saw his train-time go by with suppressed irritation. One or two others from other counties were similarly affected. The insistence here is that the trial could have been gone through within half or two thirds of the time it really took. The jury knew no more for the redundancy and were less fit for the balance of their powers than they would be under more favorable conditions. Few men can be at their best as dispensers of justice when they see their valuable time frittered away—for what? To settle a contention in which they have no live interest and for which they are held in duress as though they were not to be trusted out of sight.

Mr. Coates's experience agrees with mine—that the pleadings

of the lawyers have very little direct effect on a substantial jury. In simple cases not involving too much consideration of human nature or of the motives perhaps most jurors catch the drift of the evidence and make up their minds before the trial is through—even though they suppose themselves open to conviction either way.

Lawyers damage their cases—sometimes lose them, by what the jury regards as an unfair trick. Some jurors are affected by the fact that a famous lawyer is on the case—his reputation alone carrying weight.

A very slight thing may bias the juror. One lawyer lost favor with some jurors because of his continual smile and offhand pleasantry in his pleading. Another quite properly asked one of the jurors, whom he called by name, to define a technical business term —the lawyer being or assuming to be not quite sure of it himself. This fact was noted in the juryroom and charged up against that juryman's opinion—one of his confreres asserting that apparent friendship with the plaintiff's attorney affected his judgment. This charge was entirely good natured but was given to offset a charge that the juror favoring the defence was partisan because of his local affiliations—the defendant hailing from the juror's locality. The jury disagreed in this case which was one of great difficulty because of local interests, human motives, and the large losses and gains involved. And yet no one can question the honesty of every juror there —while also no one can help questioning the amount of coloration in the minds of not a few of the jury arising from these causes apart from the formal evidence. It was noteworthy that all the jurors who were of a certain foreign descent and understood the same foreign tongue although not previously acquainted with each other, voted together. An unconscious esprit-de-corps arose which banded them solidly against the other half of the jury. I do not think that either side noticed this fact but I am quite sure that the subtle influence of nativity and speech worked on them without their knowing it. Of course no court could foresee or suspect or avert this. I instance it only as an illustration of unconscious congregate influences on honest and conscientious but untrained minds.

I have been strongly impressed with the comparatively helpless situation of the defense in many cases of suit for damages especially

when the plaintiff is poor and the defendant in comparative affluence and still more especially when a corporation. Quite apart from the traditional attitude toward the so-called soulless corporation a class of circumstances may put the defendant at a great and unfair disadvantage.

The case of the plaintiff who slipped on a curbstone and claimed that a sunken brick pavement compelled her to so step on the curb as to slip, is in point here. The very fact that the photographs are handed about and continually referred to, that witnesses have seen that condition there for years, that the woman's leg was so sprained by her fall as to prevent her making her living as heretofore gradually works upon the minds of the jurors because no one can say that none of these things are so.

I remember seeing nothing very bad in the photographs at first but the incessant references to the lines of the picture (I now see) exaggerated in my own mind the dangers from such conditions at a crossing. Some of the jury were particular to say that they believed in discouraging the legal traffic in damage suits but they also believed that sidewalks should not be allowed to become a menace to the walking public. Small compensation was therefore agreed upon by the clumsy process of averaging the vote.

A few weeks later I went, out of curiosity, to see the place itself. I am quite confident that as a casual pedestrian the slight sinking of the bricks and the slope of the curbstone would never have attracted my notice. The photographs were in a sense true and in a sense untrue. The proportions of the street were distorted and the viewpoints were selected for a purpose. Much was made, at the trial, of the rounded curb which had been worn that way by the grating of heavy wheels against it on the corner. The rounding never looked bad to me on the photograph but as I think back to an objective view of my own mind during the trial, excusing the photograph's supposed untruth as being too small or perhaps not properly posed to show the real danger, I see how gradually I began to think against my real judgment and see untruly. And now in its very presence the stone itself looked no worse to me than did the photograph at first; and I am bound to wonder why if this pavement and curb were entirely to blame there are not such accidents going on all over the

city every day, for I notice that that pavement was relatively not dangerous or bad.

I am not quarrelling with the verdict in which I had a part. It was not very serious either way except as a matter of abstract justice. I am merely trying to show how much more those pictures, in conjunction with the strained reiterations of witnesses, counted for than they were really worth. The mind believed what was true in them because they were photographs and excused and apologized for what seemed untrue (but was really very true)—also because they were photographs.

In an article on "Photography and Crime" Mr. C. H. Claudy says:

> "Any capable photographer knows how to magnify or minimize certain parts of the perspective of any view. Thus, a long-focus, narrow-angle lens will give a totally different result from a wide-angle, short-focus lens. In a suit for damages because of obstructions left upon the street, for instance, a lawyer will have a photographer use the latter lens and stand close to the alleged obstructions. A pile of earth, particularly if photographed low, will appear very large in proportion to the vanishing perspective of the street. A natural-angle photograph, made with a ten-inch lens on a five-by-seven plate, will give a totally different idea of the size of the obstruction.
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> "Cracks in buildings, as evidence of the damage done by subway construction or sewer-laying, can not be brought before a jury; but photographs of them can be so used as evidence. A clever photographer, by manipulation of his illumination, so that one side of the crack throws a heavy shadow can make such fissures appear far larger than they really are. Pictures of hills, to show the locality of a runaway, can be made steep or flat according to how the camera is handled. It is not, therefore, necessary to resort to actual changing of the negative and print to make the camera deceptive, and more and more are our courts coming to understand this fact."

I have been startled several times with the seeming unevenness and bad brick-laying in a brick extension wall of my own house. In early summer the low afternoon sun throws long shadows lengthwise from irregularities in the brick quite unobservable at other times. A photograph of the wall at such a time might be shown as strong evidence that the wall had suffered some kind of disruption. Yet the fact is that it is finely and evenly laid.

No allegations of attempt to falsify in the case under consideration are here intended. It is true that in the pictures the little streets looked broad and fine but the defects of the pavement and the curb

were not exaggerated. The point is, that when photographs are shown in support of the verbal testimony even the discriminating mind is apt to be over-persuaded by the mere fact of pictures. Any seeming lack therefore on the part of the picture is subconsciously excused on the ground that a depression of two inches in a pavement is necessarily diminished to almost nothing in a photograph. Then the mind rebounds to an exaggeration of the truth notwithstanding the claim that the depression does not exceed two inches.

Manifestly, the defense has little show in such a case. He cannot prove that the plaintiff did not fall from this cause. His one witness denied the dangerous character of conditions and to us jurors this denial seemed fatuous and partisan. But when I saw the place itself I thought this witness more right than wrong—more true indeed to the moral fact than all the others.

I am quite sure that had the jury been taken in a body to the actual scene of this accident the outcome would have been different. I could scarcely believe my own eyes. I tried to slip on the curb as the plaintiff slipped because of the slightly sunken but not rough pavement, but I failed. True, I had rubber heels but true, also, the woman may have had suicidal "French heels." Of this we jurors had no knowledge but some of us thought of it. All the verbal testimony of many witnesses corroborated what the photograph was supposed to show. It did show lines and shadows but not danger. The witness said danger and the jury believed that the photographs showed it too. Doubtless, also, the degree of damage which the woman suffered became, sub-consciously in the jury mind, the measure of that danger. I see now, that the pictures did not prove danger —not relatively, at least, as I find pavements and curbs wherever I go as bad and worse but they do not seem to me dangerous. If the defendant was guilty of negligence, comparatively few property holders are not guilty.

This case has been reviewed at some length because of its illustrative values in pointing out how the mind shifts itself under the subtilties of "evidence" which is in reality no evidence, but which cannot be denied or assailed as untrue and cannot be easily ruled out.

It seems to me that with a knowledge of the psychology of the gradual winning of the juryman's mind in spite of his own better

thinking, appeal for retrial should have serious consideration by the judges. In such a case the defense in not weak because the lawyer is weak, not because the defense has not been properly worked up but because all the activity, all the pictoriality, all the interest, lies with the plaintiff. One woman slips; a hundred thousand do not slip; but they never come on the witness stand. Moreover, the mind assumes that unless the case were good no photographs would have been taken, as the risk of recoil would have been too great.

In cases where medical experts are called to testify lawyers are too much inclined to display their crammed knowledge of the anatomy and physiology of injured limbs. Direct and cross-examination in these cases are sometimes carried to absurd length and minuteness. It makes little difference to a jury how a nerve moves the muscle and how the life process itself produces movement. I am quite aware that some of these foolish professional displays are made with the hope of discrediting the opposite expert witness but as a rule they are wearisome and even ludicrous—and neither of these conditions helps the cause.

Whatever makes for straightforward simplicity counts for the jury's favor. It is then that the real evidence weighs at its true value. Of course there are jurymen who admire adroitness, shrewdness, cleverness, even craftiness in an attorney and are much influenced by that admiration rather than by the real merits of the case. But these very attainments or methods work the other way with many jurors; and the insolent brow-beating of witnesses or manifest effort to confuse and "rattle" a simple-minded and honest witness is pretty sure to awaken indignation in the jury and recoil on the parties indulging in that kind of practice. This indignation is no part of the evidence which jurors are sworn to decide the case upon but it goes for evidence as weight in the mental balance.

And on this point, when the court orders a specific verdict without consulting the mind of the jury, is it not virtually ordering possible perjury or, in effect, subornation? Seeing their liability to this kind of termination to their labors jurors sometimes grow lax or indignant, according to their temper. They become puppets either way and official "evidence" becomes of less moral moment in their service.

. In point here, is a paragraph from *Law Notes* (March, 1910):

" Judge Caldwell who had served nearly 35 years on the bench of the Federal District and Circuit Courts said that trial by jury was guaranteed in the Constitution 'because the people knew the judges were poor judges of the facts' and that 'every day's experience confirms the wisdom of their action. Equally strong testimony has been given by some of the greatest judges this country has ever known,' . . . . How many self-respecting men will condescend to serve willingly on juries if they know the judge is likely to hold them up to public scorn because he disagrees with their unanimous opinion delivered under oath? "

Now let us add to this question the weight of the fact that the greater the intelligence and moral force of the juror the greater his antipathy to such an unjust service. And in his resentment lies the psyschological menace to his natural qualifications. And surely the lower grade of man is not to be preferred because of his being the more subservient.

Not having sufficiently investigated the claim of the incompetency of judges to judge of " facts " I make no comment on it—except that apriori grounds seem to me to favor it. But if it be true then many a case suffers (as indeed every juror knows) from the exclusion as well as the inclusion of testimony. If the juror is a better judge of " facts " than the judge is then the juror should have power to call for such facts as appear to him to bear on the case. I for one have heard witnesses choked off by the incessant objecting of attorneys until the testimony was squeezed dry of all that essence which gives to a story its true value. True, a witness may overcolor and may run into imaginings and expeditionary sallies of sentiment and statement and this freedom should be limited. Nevertheless, the dry skeleton of what the court calls " facts " is often as untrue by default of important facts as the overweighted story tends toward giving an untrue impression of the case.

The juror should not be submitted to the strain of shutting out what he heard ruled out by the judge as not being relevant or admissible as evidence. I remember hearing a jury debate the import of an offhand written promise to pay a large sum. A youthful juror reminded us that the judge had said that we could consider the oral testimony in such a case. At least half the jury disregarded the paper because the judge permitted the oral testimony to count. The

other half saw in the paper the most vital evidence not, however, because the judge admitted it but because it appealed to their sense of business honor. Another judge might have ruled it out entirely as it lacked some factors of a formal document. What is evidence to some is not evidence to all, and no line can be drawn for testimony. Should not jurors have some right to demand such information as seems to them to be evidence? The "rules of evidence" are sometimes as wooden as they are usually useful. The mind of the average jury is in danger of being befogged by the ins and outs of matter offered as testimony.

It is true that a jury has more power than it usually takes in examining witnesses or inquiring of the court. But that is in large degree because the juror feels his automatism and his incarceration. Many a juror would like to ask questions but he has not been invited and he is afraid of attitude. He works under threat and all penologists are agreed that timidity and fear under threat do not make for strong intitiative or moral control.

In no situation in life is what Bergson calls the "professional comic" more evident than in the court room. It is always conspicuous in convocations of the clergy, of physicians, and even of men of science. The professional comic is the all-enveloping rut and the discerning layman is usually the stone that throws the wheel out on to new ground. This is the value of the jury. The juror is a layman but unfortunately he is too much a strangled and manacled servant to have either a layman's self-respecting freedom or the self-imposed constrictions of professionalism. He is never quite himself because he is under duress involuntarily doing work of professional nicety—involving complex calculation and insight to human motives, a gift of interpretation, a sense of probability, the elimination of personal bias. He is physiologist, pathologist, physicist, psychologist, detective, financier, moralist, jurist. And he is only a lackey without personality.

It is comparatively seldom that the witness who is sworn to give the "whole truth" is permitted to do so. The juror sees the effort of counsel to prevent his getting hold of it. He notes how the wooden "rules of evidence" sometimes cut out a body of testimony, the

pores of which are juicy with the very quintessence of evidence. The keen juror, scenting the aroma, longs to tap or squeeze out the sap of truth. But who is he, forsooth, but a juryman?

A physician, speaking out of much experience as an expert witness, told his medical associates that it is not enough that the evidence which they might be called on to give should be the truth. This, indeed, he said, has little to do with it for it must agree with the lawyers' and the court's idea of what is evidence, which is sometimes quite another thing.

Meantime the poor juror is between the devil and the deep sea—between the professional battle to suppress facts and his own sense of essential truth; between his own real conscience and the artificially imposed conscience of the court. So long, therefore, as "the evidence" is prescribed by the court the juror ought not to be sworn to render verdict according to "the evidence," but without prejudice to strive to be just to all parties concerned. No other discipline is just to any party concerned.

There is strong tendency to reduce the employment of juries. The question is whether there could not be a better kind of jury, partaking at once of lay and of professional advantages. It would be perhaps a permanent board adequately paid, non political, smaller than our present jury, not bound by the rule of unanimity, having large authority in taking and using testimony, and treated with the dignity due to the upper officers of a court of justice. In other words the disciplinary irritants, drawbacks, indignities, coercion, threats and sources of indifference and personal bias should be reduced to the minimum. Only thus can the balances of the juror's mind work as freely as possible in the valuation of evidence—which evidence, in very truth is not limited to the sworn statements of witnesses or other facts of the testimony but grows out of the interpretation of experience and of human nature in the large. The system, whatever it is, should not indifferently permit or encourage self-defeat. Justice to the contending parties rests in no small degree on justice to the jury.